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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,620	03/17/2004	Richard D. Stackenwalt	0306	4780

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ARMSTRONG WORLD INDUSTRIES, INC.
LEGAL DEPARTMENT
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EXAMINER

GILBERT, WILLIAM V

ART UNIT	PAPER NUMBER
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3635

MAIL DATE	DELIVERY MODE
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10/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/802,620	STACKENWALT ET AL.	
	Examiner	Art Unit	
	William V. Gilbert	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 October 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 and 3-17 is/are pending in the application.
- 4a) Of the above claim(s) 2,18 and 19 is/are withdrawn from consideration.
- 5) Claim(s) 14-17 is/are allowed.
- 6) Claim(s) 1 and 3-10 is/are rejected.
- 7) Claim(s) 11-13 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

This is a final office action. Claims 2, 18 and 19 are cancelled. Claims 1, 3-17 are pending.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4, 5, 6 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Morris.

Claim 1: Morris discloses a flexible panel (Fig. 3: 26) having a first side edge (portion proximate 46) and a second side edge (opposite end), first and second edge strips (43, opposite end 43) cooperating with the first side edge of the panel and the second edge, the first and second edge strips have at least one mounting member receiving area (portion 43 that is proximate 45), the

mounting member receiving area is dimensioned to receive a mounting member (45) and a biasing member (27) having first and second opposed ends, the first end of the member is attached to the first edge strip and the second end of the biasing member is attached to the second edge strip to maintain the panel in an flexed condition (See Fig. 2: generally). The applicant should note that the mounting member is not positively claimed, rather that the language "dimensioned to receive a mounting member therein" line 8 is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 4: the panel has first and second support members (bracket 45, side opposite 45), the first support member is attached to the first edge strip (via the screw) and the second support member is attached to the second edge strip which would result in the panel's being able to be suspended form a surface.

Claim 5: the edge strips have a panel receiving recess (proximate 44) extending from an edge thereof, the recess

has opposed side walls (43, side opposite 43), the opposed side walls being spaced apart from one another at a distance which is slightly larger than the thickness of the panel (see Fig. 4, generally) and the panel can be inserted into the panel receiving recess.

Claim 6: the panel receiving recess extends the entire length of the strip.

Claim 9: the edge strips have an arcuate channel (Fig. 4 between elements 44 and 46), the channel is spaced from the receiving recess and positioned proximate to an edge of the strip.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris.

Claim 3: Morris discloses the claimed invention except that the biasing member is adjustable to allow the flexible panel to be retained at different positions to vary the appearance of the panel. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice because adjustability, where needed, is not a patentable advance.

In re Stevens, 212 F.2d 197 (CCPA 1954); see M.P.E.P. §2144.04(V)(D).

Claim 10: while Morris discloses a longitudinal slot (Fig. 4, portion of the arcuate channel that is parallel to edge portion proximate 44), it does not disclose the slot being dimensioned such that the spacing between the side

surfaces of the slot is less than the diameter of the arcuate channel. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have this limitation because the width of the slot can be made to any dimension to satisfy the need requirement and a change in shape is within the level of ordinary skill in the art absent persuasive evidence that the particular configuration of the claimed invention is significant. *In re Dailey*, 357 F.2d 669 (CCPA 1966). See M.P.E.P. §2144.04(II)(B).

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris as applied to claim 5 above, and further in view of Motro (U.S. Publication 2003/0159372).

Claim 7: Morris discloses the claimed invention including attachment of the panel, but not the use of adhesive tape to attach the panel. Motro discloses the use of dual sided adhesive tape (paragraph 33) to attach a panel. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use a double sided adhesive as in Motro with the panel in Morris because it is well known in the art to use

adhesives to form a more secure seal and prevent leakage, and the adhesive in Motro could be used with the panel in Morris.

Claim 8: Morris in view of Motro disclose the claimed invention except for a removable cover on the tape. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have a removable cover on double-sided adhesives to preserve the adhesive until one is ready to use it.

Allowable Subject Matter

3. Claims 11-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 14-17 are allowed.

Response to Arguments

4. Applicant's arguments with respect to claims 1 and following have been considered but are moot in view of the new ground(s) of rejection as claims are amended by the applicant.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gower (U.S. Patent No. 5,595,233); Lechner (U.S. Patent No. 5,027,564); Deutsch (U.S. Patent No. 3,968,609); Lawrence (U.S. Patent No. 4,860,504).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WVG 10/29/07

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